

applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act performance evaluation, shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining compliance with §§ 925.9 and 925.10, a Bank may, in its discretion, permit an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a consolidated regulatory financial report as a combined entity with its appropriate regulator, to provide the combined pro forma financial statement for the combined entity filed with the regulator that approved the merger or acquisition.

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, 40024, July 27, 1998; 65 FR 8261, Feb. 18, 2000; 70 FR 9510, Feb. 28, 2005]

§ 925.16 Financial condition requirement for insurance company applicants.

An insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Act (12 U.S.C. 1424(a)(2)(B)) and § 925.6(a)(4) of this part, if, based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners.

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998; 65 FR 8261, Feb. 18, 2000; 67 FR 12849, Mar. 20, 2002; 70 FR 9510, Feb. 28, 2005]

§ 925.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 925.7 to

925.16 of this part is in compliance with section 4(a) of the Act (12 U.S.C. 1424(a)) and § 925.6 (a) and (b) of this part, may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 925.8, 925.11, 925.12, 925.13, or 925.16 of this part is in noncompliance with section 4(a) of the Act (12 U.S.C. 1424(a)) and § 925.6(a)(2), (4), (5), or (6) of this part, may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) *Presumptive noncompliance by insurance company applicant with "subject to inspection and regulation" requirement of § 925.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by § 925.8 of this part, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 925.6(a)(2) of this part, notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 925.11 and 925.16—(1) Applicants other than insurance companies.* For applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 925.11(b)(1) of this part, a variance from the rating required by § 925.11(b)(3)(i) of this part, or a variance from a performance trend criterion required by § 925.11(b)(3)(i) of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 925.6(a)(4) of this part, notwithstanding the lack of rating or variance.

(2) *Insurance company applicants.* In the case of an insurance company applicant's variance from a capital requirement or standard of § 925.16 of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 925.6(a)(4) of this part, notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 925.12—(1) Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating

that the proceedings will not likely result in enforcement action. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 925.11(b)(2) and 925.16 of this part; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 925.11(b)(2) and 925.16 of this part. The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 925.13 and 925.14(d).* If an applicant received a "Substantial Non-Compliance" rating on its most recent formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, or a "Needs to Improve" CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of "Needs to Improve" or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998; 65 FR 8261, Feb. 18, 2000; 67 FR 12849, Mar. 20, 2002; 70 FR 9510, Feb. 28, 2005]

§ 925.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform the Finance Board in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Finance Board.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in

which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, the Finance Board and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that the Finance Board make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the Finance Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the